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November 15, 2013

VIA ELECTRONIC & US MAIL

Ms. Stephanie Vaughn
ATTN: Lower Passaic River Remedial Project Manager
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 19th Floor
New York, New York 10007

Re: Monthly Progress Report No. 14 – October 2013 Lower Passaic River Study Area (LPRSA) River Mile 10.9 Removal Action CERCLA Docket No. 02-2012-2015

Dear Ms. Vaughn:

de maximis, inc. is submitting this Monthly Progress Report for the above-captioned project on behalf of the Cooperating Parties Group (CPG) pursuant to the Administrative Settlement Agreement and Order on Consent for Removal Action (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 28 of the River Mile (RM) 10.9 Settlement Agreement.

(a) Actions which have been taken to comply with this Settlement Agreement during the month of October, 2013.

Meetings/Conference Calls

- On October 1 in a teleconference between EPA and CPG, EPA agreed that the rock slope between Station 32+00 and Station 37+50 would not be dredged as part of this Removal Action.
- On October 1, CPG met with all RM 10.9 Removal Action contractors and EPA to review the prior week's activities and to plan for the upcoming week.
- On October 23, CPG and EPA held a teleconference to discuss the Capping Plan and Schedule.

Correspondence

- On October 1, CPG summarized the agreements of that day's teleconference in an email to EPA.
- On October 1, EPA directed CPG to dredge the tip of the Removal Area centered on station 37+50, corresponding to a potentially dredge-able sediment deposit where a TCDD concentration of 36 ppb was previously detected in sediment cores at a 0.5 – 1.5 foot interval. CPG subsequently proposed and EPA accepted a 15 cubic yard cut in this area. EPA also indicated that there were no regulatory restrictions for dredging into the navigation channel when implementing this action.

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- On October 2, CPG submitted preliminary survey results to EPA for cuts 7 9.
- On October 2, CPG submitted to EPA results of a poling investigation in undercut areas 4T and 6T, recommending no further action in those undercuts.
- On October 2, EPA responded to the results of the poling investigation and requested an additional attempt be made to dredge portions of undercut area 4T. CPG proposed and EPA accepted a plan to make a second attempt at dredging within designated areas of Cut 4T.
- On October 2, EPA reviewed and approved CPG's proposed www.rm109.com website project statements and reports, which were then posted the same day.
- On October 3, Hudson County provided to CPG an accounting of contractor charges during August that CPG agreed to reimburse in support of prior Bridge Street Bridge (BSB) openings.
- On October 3, CPG provided EPA a sediment sampling plan for the hard pan areas.
- On October 3, CPG notified bridge operators and the community of additional bridge openings required to demobilize dredge equipment from the RM 10.9 site.
- On October 3, CPG submitted for EPA review a plan to sample and analyze post-dredge surface sediment throughout the Removal Area for PCDD/PCDF, total PCBs, PAHs and Mercury.
- On October 4, CPG submitted preliminary PCDD/PCDF analysis of sediments collected from cuts 4T and 6T.
- On October 4, EPA responded to an EPA inquiry regarding disposal of the ripped silt curtains, indicated it would be added to stabilized sediment containers for final landfill disposal.
- On October 4, EPA requested additional details from CPG on how the modified cap
 would be applied in areas with large boulders and debris. CPG responded that same day
 that the cap's active layer would be placed on the boulders to allow it to fill the space in
 between, and that obstructions that could be removed like an abandoned cable, would
 be removed prior to placing the active layer.
- On October 4, EPA approved the sediment sampling plan for hard pan areas.
- On October 4, the Town of Harrison demanded that a bridge opening scheduled for October 5 be rescheduled so as not to interfere with a Red Bulls game. CPG agreed once the Counties acknowledged they would support 2 bridge openings on October 6.
- On October 4, CPG submitted to EPA the final survey results for cuts 7 10.
- On October 4, CPG requested from EPA approval to dispose of sediment cores that were collected for potential pore water studies but which are no longer needed.
- On October 5, the Rutherford Police informed contractors to CPG of a complaint from a Rutherford resident concerned that wakes from boats under contract to CPG were damaging a retaining wall on his property.
- On October 5, EPA asked questions regarding specific information posted on the final bathymetric survey map for cuts 7 -10.
- On October 7, CPG responded to EPA's October 5 inquiry by providing updated survey maps for cuts 7 – 10 and providing additional data on dredge volumes.

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- On October 7, EPA provided CPG with additional comments on the High Subgrade Cap Design document. CPG modified the document as requested and resubmitted it the same day.
- On October 8, EPA requested and CPG made one additional change to the High Subgrade Cap Design document.
- On October 8, CPG notified EPA of its schedule for collecting post-dredging sediment samples from the Removal Area.
- On October 8, CPG requested EPA review of reports intended for posting on www.rm109.com.
- On October 9, EPA requested that CPG perform tests to determine how fast the sand and AquaGate material will fall through the water column, and requested that CPG generate one or two full-size drawings of the post-dredge Removal Area that integrates post-dredge surface elevation differentials, highlights undercut areas, and identifies poling results and sampling locations.
- On October 9, EPA requested changes to the reports intended for website postings, and after the reports were modified, approved them for posting.
- On October 9, EPA approved the High Subgrade Cap Design document.
- On October 9, EPA questioned whether turbidity levels measured on September 30 should have triggered a response. CPG replied that none of the turbidity levels measured that day met the action criteria established for this project in the Water Quality Monitoring Plan.
- On October 9, EPA informed CPG of a news report on My 9 TV in which the Passaic River water quality was briefly discussed and the RM 10.9 dredging equipment provided a partial visual backdrop.
- On October 14, CPG submitted for EPA review two integrated, full-size drawings of the post-dredge Removal Area surface containing the information requested on October 9.
- On October 17, EPA requested several clarifications be added to the integrated drawings of the post-dredge Removal Area surface.
- On October 17, EPA requested information on the status of the Capping Plan.
- On October 21, CPG submitted to EPA integrated drawings of the post-dredge surface with clarifications EPA requested on October 17, the Capping Plan, a tentative capping schedule, a technical memorandum summarizing air monitoring results from dredging operations, and a recommendation to significantly decrease air monitoring during capping.
- On October 22, EPA inquired as to the status of analytical testing for the sand proposed for the cap's active layer.
- On October 22, CPG notified EPA that mobilization of capping equipment would be delayed until October 30.
- On October 22, in response to questions about the stability of the active layer placed into the near-shore stones and riprap, CPG provided EPA with diagrams from the Final Design Report highlighting shear stresses and water velocities in those areas associated with storm events, indicating that the stones and riprap would be stable in storm flows.

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- On October 23, CPG provided EPA with an updated schedule, moving mobilization of capping equipment to October 31.
- On October 23, EPA commented on CPG's October 21 air monitoring technical memorandum.
- On October 23, CPG forwarded to EPA an analytical report on the quality of sand offered commercially by Amboy Aggregates.
- On October 23, EPA requested and CPG provided additional modifications to the integrated drawings of the post-dredging Removal Area surface.
- On October 24, CPG requested clarification from Essex County on amounts they were charging CPG for operator overtime in support of bridge openings.
- On October 24, CPG provided EPA with the requested modifications to the integrated drawings of the post-dredging Removal Area surface.
- On October 24, EPA requested that TOC sampling of the placed active layer be added to the Capping Plan.
- On October 24, EPA requested that the air monitoring recommendations in CPG's October 21 Technical Memorandum clarify the intended frequency of air quality monitoring during capping. CPG subsequently provided EPA a revised Technical Memorandum with the requested frequency.
- On October 25, EPA approved the revised air monitoring plan for capping.
- On October 25, Hudson County notified CPG of additional mechanical damage that occurred to BSB during a test opening on October 24.
- On October 29, Hudson County informed CPG and the US Coast Guard that all repairs of BSB were completed, including repairs of the damage incurred on October 24.
- On October 29, CPG responded to EPA's October 24 request to consider TOC testing of the placed active layer.
- On October 29, CPG informed EPA that mobilization of capping barges to the RM 10.9 Removal Area was being rescheduled to November 5.
- On October 29, CPG forwarded to EPA analytical data characterizing the sand specifically stockpiled at Amboy Aggregates for the RM 10.9 cap.
- On October 30, CPG submitted to EPA a technical memorandum summarizing all water quality data collected before and during dredging, concluding that dredging had no impacts on water quality at the monitoring stations, and recommending significant reductions in water quality testing during capping.
- On October 30, CPG submitted to EPA an updated, anticipated schedule to implement the capping phase of the project.
- On October 30, Hudson County informed CPG and the US Coast Guard that the bridges they operate jointly with Essex County, including BSB, were all operational and ready to support the next phase of the Removal Action project. CPG then informed EPA.
- On October 31, EPA requested that CPG reinstitute weekly conference calls to review progress and issues associated with capping activities.

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 On October 31, CPG issued to bridge operators and other stakeholders a 2 week projection of barge movements required for the capping operations that would involve bridge openings.

Work

- On October 2, CPG removed over 20 cubic yards of material from the north tip of the Removal Area, focusing on the spot where the highest concentration of TCDD in sediment was previously detected.
- On October 3, CPG made a second attempt to dredge high spots at the direction of EPA to verify the inability to achieve the required dredge depth.
- On October 3, CPG completed dredging activities in the RM 10.9 Removal Area.
- On October 5, CPG demobilized dredging equipment from the RM 10.9 Removal Area.
- On October 9, CPG collected multiple sediment samples for chemical analysis from the post-dredge surface in the Removal Area.
- CPG completed all post dredge surveys and post-dredge sampling activities.
- Clean Earth Dredging Technologies stabilized the remaining sediment dredged from RM 10.9, decontaminated the scows and stabilization equipment that handled RM 10.9 sediment and water, loaded all remaining debris and stabilized sediment into intermodal containers, and fulfilled other requirements of their Acceptable Use Determination (AUD) permit.
- Clean Harbors finished treating all free water associated with RM 10.9 sediments, Clean Earth equipment wash-down and runoff.
- Clean Harbors loaded the last containers of stabilized sediment and debris onto rail cars for transport to the Lone Mountain Landfill in Waynoka, Oklahoma.
- CPG continued to monitor the progress of repairs at BSB.
- CPG developed a Capping Plan, performed analytical tests on the sand stockpiled for the cap, and installed conveyors, hoppers, excavator cranes, a TeleBelt, and other equipment required for capping, on the capping barges.
- CPG reviewed and discussed charges from Hudson and Essex Counties for operator and contractor support of bridge openings.
- CPG continued an internal review of long term monitoring strategies for the RM 10.9 Removal Area.

(b) Results of Sampling and Tests

- On October 2, CPG provided EPA turbidity data organized by tide cycles and air quality data for the prior week of dredging activity.
- On October 8, CPG provided EPA turbidity data organized by tide cycles and air quality data for the prior week of dredging activity.
- On October 24, CPG provided EPA data packages for all Water Column Monitoring (Initial 48-Hour and Re-suspension Monitoring) and Air Monitoring activities performed by CH2M Hill.

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(c) Work planned for the next two months with schedules relating to the overall project schedule for design completion and construction

- CPG will confirm receipt of all stabilized sediment and Removal Action debris at the Clean Harbor's Lone Mountain Landfill in Oklahoma.
- CPG will mobilize and begin capping operations
- CPG will implement the revised WQMP and PAMP.
- If environmental monitors continue to show no release of dust to the air or no turbidity to water above ambient conditions, CPG will seek additional modifications to the WQMP and PAMP for the capping phase.
- CPG will continue to provide regular and as-needed updates to river users about barge movements and other important project milestones.
- · CPG will continue to monitor bridge operability issues.
- · CPG will conclude capping operations and begin to draft a Final Report.

(d) <u>Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays</u>

- There is still no resolution concerning the Tierra/Maxus/Occidental (TMO) UAO and their participation in the RM 10.9 Removal Action. As documented in the CPG's correspondence of July 27, 2012 and September 7, 2012, the offer from TMO was inadequate and provided no meaningful value to the RM 10.9 Removal Action.
- The inoperability of the Bridge Street Bridge due to Hurricane Sandy damage delayed
 the start of the Removal Action because equipment could not be mobilized up river until
 that bridge was operational. CPG informed EPA of a Force Majeure condition by phone
 on June 24 and in writing on June 29 as required by the AOC. CPG and its contractors
 worked with the Counties to resolve the BSB operational issues and agreed to provide
 funds to the three counties to support operator overtime.
- CPG strongly disagrees with the EPA's July 15 letter denying the Force Majeure condition outlined in CPG's June 29, 2013. EPA's rationale for denial is inconsistent with terms and definitions in the AOC. Both the inoperability of the Bridge Street Bridge due to Hurricane Sandy and the repeated delays in the repaired motors being shipped and reinstalled have been and continue to be clearly beyond the control of the CPG. Moreover, Hudson and Essex Counties have failed to meet their obligations under Federal Regulations to properly maintain and operate their bridges and to provide proper notice of the status of their bridges to US Coast Guard, mariners and the general public. Finally, the CPG has voluntarily provided funds to the Counties to operate the bridges with no regulatory requirement to do so. As noted above it is the Counties obligation to ensure that their bridges are operating and ready to open upon notice. CPG has addressed this issue in its July 31 letter to EPA.
- A significant mechanical failure that occurred on August 31 at BSB resulted in a second Force Majeure condition that prevented any barge movement from August 31 through

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> September 18. The CPG provided initial notice to EPA's oversight contractor on August 31 and provided additional information on September 1 to the EPA. On September 5, the CPG submitted a Force Majeure letter regarding the possible impact of this bridge failure on Removal Action schedules, which was then updated on September 17. On September 3, the CPG notified the US Coast Guard of the situation and requested that the USCG use its authority to direct that the bridge be opened so that marine traffic can resume; the USCG would not compel the Counties to operate the BSB based on the Counties' initial concern about damage to the BSB. However, the Counties subsequently determined that the BSB could be opened without damage but demanded monetary compensation for bridge openings that they are required to provide upon receipt of proper and timely notice (without compensation) pursuant to federal regulations. The CPG reluctantly agreed to provide the compensation in order to complete the Removal Action. EPA and USCG have been reluctant and unwilling to utilize their enforcement and regulatory authority to compel the Counties to fulfill their obligation. The re-opening of BSB on September 18 allowed dredging to resume, and CPG anticipates that the Removal Action including capping can be completed in January 2014 assuming there are no additional issues related to bridge operations or other conditions beyond its control.

• Hudson County has notified the CPG that BSB will need to be taken out of service for a 5 day period after the Thanksgiving holiday to replace a second shaft which the County's mechanical contractor indicates is now showing signs of being stressed. The CPG will continue to monitor this situation and notify Hudson County of its schedule so that repairs can be scheduled at a time that has minimum disruption on the capping schedule. However, if the second shaft suffers damage before that time, capping operations may be delayed if BSB is again taken out of service and the repair schedule prevents it from even being opened with winches.

If you have any questions, please contact Bill Potter, Rob Law or me at (908) 735-9315.

Very truly yours,

de maximis, inc.

Stan Kaczmarek, PE

RM 10.9 Removal Action Project Coordinator

cc: Pat Hick, EPA Office of Regional Counsel

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